

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MANUEL ACALA,

Plaintiff,

v.

JASON F. ROBERSON *et al.*,

Defendants.

Case No. C05-5082FDB

REPORT AND  
RECOMMENDATION:

**NOTED FOR:  
JULY 15<sup>th</sup>, 2005**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is a stipulated dismissal and release and settlement agreement that asks the court to waive any further payment of the filing fee as part of the agreed settlement. (Dkt. # 26).

The court is not aware of any authority allowing the court to waive filing fees for an inmate who is proceeding *in forma pauperis*. Indeed the concept of waiver of the fee appears contrary to the provisions of 28 U.S.C. § 1915 since it was amended by the Prison Litigation Reform Act. The parties anticipated there may be a problem with the provision waiving the filing fee and in the release and settlement agreement noted "The parties also agree to sign and file a stipulated motion for entry

1 of an order absolving the Plaintiff from all further payments of the filing fee in this action. The  
2 parties agree and understand that the Court is not bound to grant the parties' motion absolving the  
3 Plaintiff from paying filing fees." (Dkt. # 26, Release and Settlement page 2 ¶ 5).

4 The settlement agreement does not specifically indicate there is a settlement if the court  
5 rejects the motion to waive filing fees. However, the wording of the agreement implies there is still  
6 an agreement to settle the action. (Dkt. # 26).

7 The court should accept the settlement agreement but deny the motion to waive further  
8 payment of the filing fee. By submitting a Report and Recommendation instead of a Recommended  
9 for Entry Order the court gives the parties a chance to submit objections which could include  
10 authority for the proposition the court can waive the filing fee or argument as to whether there is in  
11 fact an agreement in this case. A proposed order accompanies this Report and Recommendation.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
13 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
14 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
15 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
16 72(b), the clerk is directed to set the matter for consideration on **July 15<sup>th</sup>, 2005**.

17  
18 DATED this 10<sup>th</sup> day of June, 2005.

19  
20 /S/ J. Kelley Arnold  
21 J. Kelley Arnold  
22 United States Magistrate Judge  
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